

The Environmental Damage Regulations (EDR)

Regulations effective in England (March 2009) and Wales (May 2009)* include new concepts to make businesses that cause environmental damage responsible for the full consequences

The regulations deal with serious environmental damage

- Damage to protected species and their habitats including sites of Special Scientific Interest
- Damage to water (streams, rivers, ponds, lakes as well as underground water sources or groundwater)
- Damage to land with significant risk for human health.

The regulations introduce some new concepts including:

- **Primary remediation** means repairing environmental damage and may include a wide range of techniques to remove contaminants, restock, replant, and manage the recovery of a damaged area.
- **Complementary remediation.** Sometimes a site may never recover (e.g. an ancient woodland is destroyed). The business may need to provide equally beneficial improvements at the site or at another site (eg improving other parts of the woodland or of another woodland altogether) to compensate for the fact that the primary remediation wasn't able to fully restore the natural resource or service within an acceptable timeframe.
- **Compensatory Remediation.** It may take years for a damaged area to recover (lost breeding grounds for example). The Business may then have to provide compensation to the environment for interim losses from the date the damage occurred until primary remediation has achieved its full effect. This could result in the business having to make extra improvements to the site, or to another site altogether.

Implications for businesses that cause such environmental damage

- **The "Polluter Pays Principle"** means that a business causing environmental damage (or the imminent threat of such damage) will be financially liable. This goes beyond merely cleaning up the pollution and means that businesses will be fully responsible for the environmental damage they cause.
- **Act immediately.** As soon as businesses are aware of this kind of damage they must take all practicable steps to prevent further damage and inform the authorities.

Continued over

* Separate regulations for Scotland and Northern Ireland are expected in 2009

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Implications for businesses that cause such environmental damage (cont)

- **Work with the authorities.** Businesses should submit their remediation proposals to the authorities including complementary and compensatory remediation plan, before the authority issues a remediation notice.
- **Emergency costs.** In an emergency situation the Authorities may take immediate action to prevent damage and recover these costs from the business responsible for causing the damage.
- **Offences.** Failing to act immediately to prevent environmental damage is an offence according to the environmental damage regulations. Fines are unlimited and in extreme cases prison sentences may be imposed. Where companies have committed an offence, individuals who consented to them such as directors or managers may also be guilty.

Insurance solutions

- **Environmental damage.** Enviropro UK provides cover for Environmental Damage. Environmental Damage is introduced in the Environmental Damage Regulation and goes beyond just spills and releases to include also non pollution related damages.
- **Remediation costs.** Enviropro UK includes coverage for Primary remediation as well as Complementary and Compensatory remediation.
- **Immediate action.** Enviropro UK cover the costs of urgent action to prevent environmental damage as soon as policyholders become aware of the damage or the imminent threat of such damage.
- **Regulatory debts.** Enviropro UK covers clean up costs for remediation of the insured's own sites and third party sites. This includes Bartoline type regulatory debts and emergency costs where the authorities need to act immediately to an urgent situation and require reimbursement from the business for the costs.
- **Work with the authorities.** Businesses are liable for presenting their remediation plans to the Environmental authorities. The process to get approval for the proposed measures is new and will likely involve environmental consultants and experts as well as lawyers to complete the negotiations. Enviropro UK covers the investigation costs and defence costs within the limits of liability provided.
- **Defence costs for directors.** Enviropro UK includes cover for defence costs for any actions against the insured business and individual directors and managers.
- **Environmental law, old and new.** Enviropro UK covers businesses' legal liabilities according to the environmental legislations and regulations. This means that not only does EnviroPro provide cover for new regulations such as the EDR, but it also provides cover for environmental legislation that's already in existence as well as cover for future changes to environmental legislation.

Further information about the Environmental Damage Regulations

For more information, a quick guide and in depth guidance notes see the Department for Environment Food and Rural Affairs website at [Defra, UK - Environmental Protection - Environmental Liability](#)

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